

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Application of West Penn Power
Company d/b/a Allegheny Power,
Trans-Allegheny Interstate Line
Company and FirstEnergy Corp. for a
Certificate of Public Convenience
under Section 1102(a)(3) of the
Public Utility Code approving A
change of control of West Penn
Power Company And
Trans-Allegheny Interstate Line
Company

A-2010-2176520
A-2010-2176732

**PETITION TO INTERVENE OF UTILITY WORKERS
UNION OF AMERICA, AFL-CIO AND UWUA SYSTEM
LOCAL NO. 102**

On May 14, 2010, West Penn Power Company (“West Penn), Trans-Allegheny Interstate Line Company (“TrAILCo”) and FirstEnergy Corp. (“FirstEnergy”) filed a Joint Application seeking Pennsylvania Public Utility Commission (“PUC” or the “Commission”) approval for a proposed merger of Allegheny Energy, Inc. (“Allegheny”) with Element Merger Sub., Inc. (“Merger Sub”), a wholly-owned subsidiary of FirstEnergy. In response to this filing, Utility Workers Union of America, AFL-CIO (“UWUA”), and UWUA System Local No. 102 (collectively, “UWUA Intervenors”) hereby request leave to intervene with full rights as parties to the above-captioned proceedings.

UWUA Intervenors petition for leave to intervene in the above-captioned proceedings pursuant to Sections 5.71 through 5.74 of the Commission’s Regulations, 52 Pa. Code §§ 5.71-5.74. Under Pennsylvania law, those seeking leave to intervene must claim “a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of

the statute under which the proceeding is brought.” 52 Pa. Code § 5.72. In addition to a right conferred by statute, that interest can be:

(2) An interest which may be directly affected and which is not adequately represented by existing participants and to which petitioner may be bound by the action of the Commission in this proceeding.

(3) Another interest of such nature that participation of the petitioner may be in the public interest.

Id. In support thereof, UWUA Intervenors state as follows:

1. UWUA is the national labor organization representing approximately 55,000 workers primarily in electric, gas and water industries across the United States. UWUA has participated in utility merger proceedings throughout the Nation, and will bring a broad perspective to the Commission’s consideration of the matters at issue in this case. The principal offices of UWUA are located at:

815 16th St., NW
Washington, DC 20006
(202) 974-8200
(202) 974-8201 (fax)

UWUA System Local 102 is a local labor organization that is part of the UWUA.

2. UWUA System Local 102 represents approximately 800 employees at West Penn Power Company. Those workers perform diverse tasks, including those involving power station, transmission, distribution and meter reading functions. In addition, many members of UWUA System Local 102 reside in Pennsylvania and are West Penn customers. UWUA System Local 102 members who work for West Penn will be directly affected by the proposed merger. The principal office of UWUA System Local 102 is located at:

203 Reservoir Rd.
Mt. Pleasant, PA 15666
(724) 424-3700
(724) 423-3065 (fax)

2. The names and addresses of the UWUA Intervenor's attorneys are:

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3. UWUA Intervenors should be permitted to intervene because the proposed merger will have a substantial, obvious, and direct effect on the livelihoods and working conditions of the merging companies' workforce. The UWUA Intervenors seek leave to participate to ensure that evidence concerning the merger's impacts on the West Penn workforce is introduced and considered in the determination of whether the merger should be approved as in the public interest. The Joint Application trumpets the merging companies' "commitment to employees and enhanced employee opportunities," and states that "[t]he merger will offer expanded opportunities to Allegheny employees for career advancement and professional growth for those employees who remain with the combined company." Application at 14. Applicants add that "FirstEnergy has agreed to honor all Allegheny collective bargaining agreements including all

*A motion for these counsel to appear before the Commission *pro hac vice* is being filed contemporaneously with this Motion to Intervene.

terms and conditions of those agreements.” *Id.* UWUA Intervenors have a clear interest in ensuring that those promises are realized, and to seek conditions to the extent the promises are insufficient to address merger-related concerns.

4. The Commission is bound by law to consider such impacts before it approves a proposed merger. Pennsylvania law holds that “a certificate of public convenience approving a merger is not to be granted unless the Commission is able to find affirmatively that public benefit will result from the merger.” *City of New York v. Pa. P.U.C.*, 449 Pa. 136, 140 (1972); 66 Pa. C.S. § 1102(a)(3); *see also* 59 Pa. Code § 69.901. This means that the Commission must find that the merger affirmatively promotes the “service, accommodation, convenience, or safety of the public.” 66 Pa. C.S. § 1103(a). Further, “the Commission may impose such conditions in connection with [its] approval as it deems to be just and reasonable.” *Popowsky v. Pa. P.U.C.*, 594 Pa. 583 (2007).

5. Issues related to post-acquisition staffing and working conditions bear heavily on the question of whether the merger promotes the “service, accommodation, convenience, or safety of the public.” With respect to West Penn’s performance, it appears that there is room for improvement. In January 2008, the PUC’s Bureau of Audits completed its “Focused Management & Operations Audit of West Penn Power Company d/b/a Allegheny Power.” The Audit revealed several areas of needed improvement, and included a finding that “West Penn Power has a shortage of lineworkers.” Audit at 60. As explained in the Audit Report

The Audit Staff’s analysis shows that when overtime is considered, it is likely the Company has been understaffed in many districts over the last several years. The Company stated that they plan for approximately 15 percent overtime by lineworkers when considering staffing needs each year. However, the majority of service centers have experienced more than 15 percent overtime during the period reviewed.

* * *

Excessive overtime could potentially cause safety issues, decreased reliability and decreased cost effectiveness. Although the Audit Staff investigated safety issues and did not find abnormal safety issues at the Company, an elevated potential for accidents exist when excessive overtime is required.

Id. at 60-62. The recommendations set forth in the Audit include that West Penn:

Sufficiently staff the lineman positions in all districts and conduct a study to determine best utilization practices for contractors and Company linemen for projects beyond core workload.

Id. at 75.

With respect to workforce diversity issues, the Audit concluded:

Although the Company is committed to diverse workforce improvements and has programs in place, under-representation of women and minorities is still occurring.

Id. at 93. In terms of corrective actions, the Audit recommends that West Penn “[i]ntensify efforts toward attaining full representation of women and minorities.” *Id.* at 101.

6. While West Penn proposed corrective actions in a January 2008 “Implementation Plan,” UWUA Intervenors have seen no indication that needed fixes in at least these areas have in fact been completed. We believe that West Penn continues to experience significant overtime and a lack of needed lineworkers, and fear that as a consequence essential maintenance work and related tasks are not being completed in a timely manner. The issues concerning lineworker overtime and maintenance, are also being experienced in other job classifications, including (but not limited to) power station, and substation and controls (which includes transformer protection, relay work, data transmission, line protection). The work performed by these employees bears directly on safety and reliability. Certain of these workers also perform functions that have direct impacts on system reliability, including cyber security. The Application shows no indication that any of these problems have been recognized or will soon be remedied. For

example, while the Application states that for a period of two years “there will be no net reductions due to involuntary attrition” (Application at 14), this commitment does not address the need for a net *addition* in the number of lineworkers, if not in other areas,¹ and says nothing about the Company’s efforts with respect to workforce diversity.

7. No other party has a similar obligation or ability to protect the interests of UWUA members employed by the merging companies. UWUA Intervenors likewise have a strong general interest in the safety and reliability of operations at the merging companies, which will benefit the consuming public. In these regards, the UWUA Intervenor’s participation will fulfill a unique role in these proceedings.

8. The participation of UWUA Intervenors in this proceeding is in the public interest. 52 Pa. Code § 5.72(3). UWUA System Local 102, a member of the UWUA, has knowledge and information directly relevant to the matters at issue. Moreover, as a national labor organization, UWUA’s experience in utility merger proceedings throughout the country means that the UWUA can provide to the Commission a broader perspective on an evaluation of the proposed merger and its impacts. To ensure that there is no duplication of effort or undue burden on other participants, UWUA Intervenors will fully coordinate their participation in these proceedings, including through the presentation of a joint witness and representation by the same counsel.

9. UWUA Intervenors submit that these proceedings will be enhanced by their participation, which will help to ensure that the proceedings are fair and equitable to UWUA

¹ UWUA Intervenors intend at hearing to explore the contours of the staffing commitments contained in the Application, as we are uncertain (for example) what is meant by the statement that there will be no net reductions “in the employment levels of employees of AESC who are assigned to positions in the Allegheny Power Utilities comparable to their counterparts who are employed by the FirstEnergy Utilities.” Application at 14. Moreover, a promise not to engage in “involuntary attrition” does not appear to be a promise to fill positions when they become open.

members, to other employees of West Penn Power Company, and to the consuming public. In light of their unique perspective, UWUA Intervenors assert that no other party to these proceedings can adequately represent their interests.

10. For these reasons, the UWUA Intervenors respectfully submit that they meet the statutory standards for intervention set forth in 52 Pa. Code § 5.72. As such, they ask that their intervention request be granted and that they be permitted to participate in this proceeding with full rights as parties.

CONCLUSION

WHEREFORE, for the foregoing reasons, UWUA Intervenors ask that (1) they be permitted to intervene in these proceedings with full rights as parties; and (2) the issues raised herein be included as part of the list of issues to be addressed in these proceedings.

Respectfully submitted,

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June 14, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served upon all parties listed on the attached list, as well as Administrative Law Judges Wayne L. Weisman and Mary D. Long.

Dated on this 14th day of June, 2010.

/s/ Stephen H. Jordan

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